NEW YORK STATE SUPREME COURT
NEW YORK COUNTY : CIVIL TERM : PART 41

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TCR SPORTS BROADCASTING HOLDING, LLP,

Petitioner,

-against-

WN PARTNER, LLC; NINE SPORTS HOLDING, LLC; WASHINGTON NATIONALS BASEBALL CLUB, LLC; THE OFFICE OF COMMISSIONER OF BASEBALL; and COMMISSIONER OF MAJOR LEAGUE BASEBALL,

Respondents,

-and-

THE BALTIMORE ORIOLES BASEBALL CLUB and BALTIMORE ORIOLES LIMITED PARTNERSHIP, in its capacity as managing partner of TCR SPORTS BROADCASTING HOLDING, LLP,

Nominal Respondents.

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Index No. 652044/2014

New York Supreme Court
60 Centre Street
New York, New York 10007
August 18, 2014

B E F O R E: HON. LAWRENCE K. MARKS
Supreme Court Justice

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Lori Ann Sacco
Official Court Reporter

COURT CLERK: Index number 652044 of 2014, TCR Sports Broadcasting versus WN Partner, LLC. Counsel, please note your appearances for the record.

MR. HALL: Thomas Hall, Chadbourne and Parke, LLP on behalf of petitioner, TCR, also known as Mid Atlantic Sports Network. Good morning, your Honor.

MR. PHILIPS: Good morning, your Honor. Carter Phillips of Sidley, Austin on behalf of Baltimore Orioles Baseball Club and Baltimore Orioles Limited Partnership.

MR. BLEIBERG: Good morning, your Honor. Benjamin Bleiberg with Chadbourne and Parke. Here for the petitioner, TCR.

MR. WEINER: Good morning, your Honor. Arnold Weiner for the Baltimore Orioles Limited Partnership in its capacity as managing partner of TCR Sports Broadcasting.

MR. RASKAS: Good morning, your Honor. Aron Raskas also on behalf of Baltimore Orioles Limited Partnership in its capacity.

MR. NEUWIRTH: Good morning, your Honor. Stephen Neuwirth, from Quinn, Emmanuel representing respondent, Washington Nationals.

MS. BISHOP: Good morning. Jennifer Bishop from Quinn, Emmanuel also representing Washington

National.

MR. BUCKLEY: Good morning, your Honor. John Buckley from Williams and Connolly, on behalf of the Office of Public Commissioner of Baseball and Mr. Selig as Commissioner of Major League Baseball.

THE COURT: Okay. Good morning. All right. So, we're back here this morning on the petitioner's motion for preliminary injunction. Mr. Hall.

MR. HALL: Yes, your Honor. Your Honor, we seek a preliminary injunction because the Nationals have threatened if we do not comply with the arbitration award that we seek to vacate in this action, they reserve the right to terminate our right to broadcast their games as of 12:01 a.m. tomorrow morning.

As I advised the Court the last time, the status quo should be maintained. We are willing to post the bond for the amount due under the award. We are also willing to move this proceeding forward expeditiously so we can get to a decision quickly as to whether the award should be vacated.

Your Honor, if I could hand up preliminarily two items. One is we have had no right to reply because of an Order to Show Cause. You do have a three page reply affidavit from our CFO, if your

Honor would be willing to accept it.

THE COURT: Any objection to that?

MR. NEUWIRTH: Your Honor, we will argue we object to the substance, but we don't have an objection on principal to the declaration.

MR. BUCKLEY: We have no objection.

MR. HALL: Also, your Honor, we have put together a binder of key exhibits in the record just for ease of reference for today's argument.

MR. BLEIBERG: May I approach?

MR. HALL: Your Honor, I would like to raise as a threshold manner two procedural type issues, which I think may expedite today's discussion. Number one is that Major League Baseball has cross moved to throw this matter, compel arbitration of this dispute. That is not on the calendar today. It is returnable August 27th. I'll submit, your Honor, that for today's purposes it really is irrelevant, because even if down the road your Honor were to throw this case into arbitration, and if you do grant a preliminary injunction, we would ask your Honor at that time to convert the injunction into a 7502(c) injunction in aid of arbitration. The standards are the same. I don't see that as an issue that really effects what we're discussing here today.

Secondly, as a procedural matter, Major League Baseball, we were before your Honor on the TRO application, raised a number of arguments. Whether or not this was an arbitration award. Whether or not the Commissioner had similar authority to resolve it.

THE COURT: They seem to be no longer arguing.

MR. HALL: That's my question, your Honor. They seem to have abandoned those arguments and limiting it to the arbitration issue.

THE COURT: Actually, Mr. Buckley, is that correct, until the argument on the TRO, you are suggesting that this is not, in fact, an arbitration award?

MR. BUCKLEY: We haven't -- That's -- How to qualify the decision is a question that will be before the AAA arbitration panel to decide. Our position is that the RSDC decision, however you want to qualify it, is not judiciously reviewable at this time. It's not reviewable in the courts, rather the mechanism of a review pursuant to the multitiered dispute resolution process of the March 2005 agreement.

THE COURT: Right. But it was an arbitration award.

MR. BUCKLEY: We're not taking a position today. We're not pressing that issue. Ultimately it will be decided by the AAA panel, what the nature of the decision was. Our position today is that it's not judiciously reviewable because to challenge it, what has to pursue the mechanism under AC of the March 2005 agreement, because all of the claims that seek to challenge the decision of the RSDC are claims against Major League Baseball either because the RSDC is a standing committee of Major League Baseball or because there are direct allegations against Major League Baseball for having allegedly corrupted the RSDC processes. All disputes on one hand between Major League Baseball and the other MASN are to be resolved by binding mandatory arbitration pursuant to the rules of the American Arbitration Association.

THE COURT: I have some questions about that.

MR. BUCKLEY: Okay.

THE COURT: We'll get back to that in a moment.

MR. BUCKLEY: Thank you.

MR. HALL: The point remains, your Honor, even if this were an arbitration, I would still be before your Honor today on an emergency injunction today in aid of arbitration. As I said, the

standards are the same.

On the issue of arbitrability, your Honor, I'll defer to Mr. Phillips, who represents the Orioles and briefed that issue in his brief filed last Wednesday.

MR. PHILLIPS: Thank you, your Honor. I suppose I'll begin by responding to Mr. Buckley's comment. It seems to me in the first instance, as you analyze the question of assuming this was an arbitrable award, which I gather we will for purposes where we are today.

THE COURT: Doesn't the RSDC decision call it that?

MR. PHILLIPS: Absolutely, your Honor. It could not be clearer. In fact, I think that's probably why the Commissioner has withdrawn making that argument before this court. So, I don't think there is any question it is an arbitrable award and has been understood between all parties. So, there is a very brief hiatus between the TRO hearing and I think what's on the table.

So, if it's an arbitrable award, then it really falls within the arbitration act, because it undeniably is a contractual arrangement.

THE COURT: It's actually an important

question, isn't it. That if, in fact, this wasn't arbitrable, then that effects my whole analysis of these issue, doesn't it?

MR. PHILLIPS: Oh, sure. Because if this were something other than an arbitrable award, then we would have arguments about how this would be reviewable. If it is an arbitrable award, clearly the FAA and minimal protections of the FAA provides Section 10, which is judicial review, both the availability of judicial review, which is non waivable and the standards of judicial review embody Section 10, which includes all the explicit grounds that are in there, including the manifest disregard of the law, which the Supreme Court has said is an element of the judicial review process.

So, I think you're right. The fact that this is an arbitration award is what moves us directly. Why are we in court? Because Section 2.J. basically says this is an arbitration award, and parties are allowed to seek to modify or vacate that award. That's the classic language that all courts favoring arbitration, favoring the quid pro quo arrangement between the parties that arises out of the arbitration process, where one party gives up obviously a whole lot of elements of process in the

decision making in the first instance, but doesn't give up its right completely to judicial right. Just a de novo review. We're asking for, just as in any arbitration, that we're entitled to the full scope of review under these circumstances.

When Mr. Buckley says no, this is an 8.C. issue, the answer to that is, first of all, you can't take away our rights under 2.J. that are embodied in their judicial review. That's provided by the Federal Arbitration Act. It's non waivable. 8.C. doesn't apply to this in any instance. If you look at page 13 of the agreement, which is the prefatory language to Section 8, it says it only applies to proceedings except the following, including 2.J. Well, this is a 2.J. proceeding.

THE COURT: Haven't you filed an arbitration demand?

MR. PHILLIPS: We filed an arbitration demand because we're not subject to the 2.J. process. The Baltimore Orioles don't have that option. The only available remedy for us is to go to AAA arbitration on a de novo challenge that includes this, but obviously includes a lot of other breaches of the underlying settlement agreement that we have alleged against both Nationals and the Commissioner.

If you have no further questions, your Honor, I think it's clear you have jurisdiction and full authority under the Federal Arbitration Act.

MR. HALL: Your Honor, on the issues of the standards for preliminary injunction, I would ask Mr. Arnold Weiner to address that. He's counsel for managing partner of my telecast company.

MR. WEINER: Thank you, your Honor. Arnold Weiner. Your Honor, addressing the three elements in sequence. We think the record is clear and shows clearly and convincingly that there is in this case a high probability of vacatur. That is because the -- that's because the conflict of interest and the insider relationships that permeated this proceeding were compounded by the failure of baseball and the failure of the arbitrators to recognize and fulfill their affirmative duty to make, and quoting the New York cases, to make "maximum disclosure of any relationship that raises even the suggestion of possible bias or partiality." And as a direct result of their failures to make those disclosures, we ended up finding out only the sketchiest of information about the relationship between Proskauer and Major League Baseball. Virtually nothing about the relationship between Proskauer and the arbitrators.

And, in fact, we went forward with this arbitration not knowing that at the very same time that the RSDC proceedings were taking place, one of the arbitrators, Mr. Jeffrey Wilpon, the representative of the New York Mets, was at that time a partner and member of -- a general partner and member of senior management of a family partnership, the Sterling Equities Associates, that had been sued in a serious class action on behalf of hundreds of their employees who had allegedly lost millions of dollars because of the relationship between the Wilpon family and the Bernard Madoff family, and in which this family partnership and Mr. Wilpon's father and his other partners had been represented and were being represented since 2010 by the Proskauer law firm. That -- that professional relationship between Proskauer and the Wilpons in that very serious matter, which was not disclosed to us, took place at the very same time that we were dealing with this case before the RSDC panel.

And it's not as if, as the Nationals say, we weren't trying to find out about these relationships. Even though they had the duty to disclose it (gesturing), and we did not have the duty to ferret it out, we still tried to get it.

THE COURT: When did you find out about the relationships particularly between the three members of the panel and the Proskauer firm?

MR. WEINER: We found out a little bit about the relationship between the Tampa Bays and the -- Tampa Bay Rays and Proskauer law firm handling two labor arbitrations. We found that out before this, before the proceeding took place. We found it out.

THE COURT: Before the hearing?

MR. WEINER: Before the hearing, in January or February.

THE COURT: Did you object to that?

MR. WEINER: Not to that one. Not to that one. We asked for more information about it and weren't provided. We tried to find out more about it so we could make a meaningful decision.

If your Honor will look, for example, at tab three of the book that we have handed up. You'll see, if your Honor has that in front of you --

THE COURT: Yes.

MR. WEINER: You'll see Mr. Rifkin of our firm sent an e-mail to Thomas Ostertag, who is the general counsel of Major League Baseball, on January the 23rd of 2012, the hearing wasn't until April the 2nd, in which Mr. Rifkin said, "As part of our

continuing due diligence, can you confirm our understandings, without divulging any attorney/client privilege" of several things. And the third one was, "to the extent that you are aware whether Proskauer represents any MLB Clubs, including whether Proskauer represents any clubs that have participating representatives on the RSDC."

THE COURT: That was January 23rd. When was the hearing?

MR. WEINER: The hearing was April the 2nd, your Honor. Then on that same day Mr. Ostertag replied to us, and you'll see on the second page under tab three, Mr. Ostertag said, "As for Club representation, for purposes of accuracy and completeness, and in the interest of caution regarding confidentiality, I would prefer you seek such information from the various Clubs."

So, he wasn't going to touch it. Baseball wasn't going to touch it. He was sending us to the individual clubs whose representatives were on the RSDC.

And then if your Honor looks at tab four, you'll see what we did know in advance of the hearing. You'll see in tab four several e-mails, the top one of which is an e-mail from Mr. Robert

Manfred, who at that time was the Executive Vice President of Major League Baseball, who was the official overseeing this entire process, in charge of the process. Whose staff was the staff of the RSDC, as he revealed to us that day. And who, the same as if we were before the AAA is -- was the person who you would expect to have these disclosures funneled further. And all that Mr. Manfred told us on Wednesday, January 25th was what appears here at the top e-mail, which was "The clubs", that is the clubs representing RSDC, are "Pittsburgh, Tampa and the Mets. I think Proskauer does salary arbitration for Tampa." That's it. No reference to the Mets. No representations as to the Pirates.

Now that was very frankly the state of our information at that time, which was disturbing to us. And that then brings us, your Honor, to tab five. And if you look at tab five, you'll see that on February the 1st of 2002, Mr. Rifkin and Mr. Frederick, who was then representing MASN, wrote to Mr. Manfred objecting to Proskauer's continued representation as an advocate in this matter. On page two referencing the fact that there were "serious questions of partiality, prejudice" that they were concerned about. And in the next to the

last paragraph Mr. Rifkin says and Mr. Frederick said, "The full scope of Proskauer's representations of MLB, including the Labor Relations Committee and other matters, and MLB Clubs, "which are these three clubs, "including at least the one Club participating on the RSDC, is not fully known at present to TCR or the Orioles and may, in fact, extend even further."

What's also important about this is that a copy of this letter was sent to each of the members of the RSDC, including Mr. Wilpon. So, every one of the members of the arbitration panel knew no later than February 1 of 2002 that we wanted to have this information. We thought the information was significant to what was going to take place. And we weren't being provided.

Now, the very next day, after February, after that February 1st letter, there was the organizational meeting of the -- of the RSDC proceedings that was held by Mr. Manfred. If your Honor looks at tab six, you'll see the affidavit of Michael Haley, who is MASN's CFO and who is the -- who was the representative of MASN at that scheduling time. As Mr. Haley spells out in his affidavit, the meeting was held at the offices of Major League Baseball. It was presided over by Mr. Manfred. And

at the outset of the proceedings, in paragraph four, Mr. Manfred reiterated who the members were of the RSDC.

In paragraph five you'll see that MASN and Baltimore Orioles Limited Partnership objects to Proskauer's representation while currently representing Major League Baseball in spite of the fact that the information we had was extremely sketchy.

And then in paragraph seven you get to what I think is the most important aspect of this brief. "Mr. Frederick and Mr. Rifkin stated to Mr. Manfred that although MASN and BOLP had requested full disclosure from MLB and Proskauer of all of Proskauer's attorney/client relationships", they were not confident that full disclosure had been made to them.

And then in paragraph nine Mr. Rifkin asked permission of Mr. Manfred to do what Mr. Ostertag had told him he had to do. He asked for permission to talk to the representatives of the Club, the arbitrators, about their relationships with the Proskauer firm. He had to make that request, because Mr. Ostertag had already told him that baseball wasn't going to provide that information and he

should go to the Club.

So, what happened when Mr. Rifkin asked permission to do what Mr. Ostertag told him he had to do. In paragraph nine of the affidavit it says explicitly, Mr. Rifkin then asked Mr. Manfred for the right to ask the RSDC members about their relationships with the Proskauer firm, but Mr. Manfred said he could not do so. Mr. Frederick and Mr. Rifkin then requested that Mr. Manfred promptly disclose all of Proskauer's attorney/client relationships with MLB and the RSDC. And further requested that their objections be made known to the RSDC. And Mr. Manfred did not provide the information. That unfortunately is what occurred here.

And then on April the 2nd, your Honor, I think that's also in the affidavit, when the parties convened for the RSDC hearing, Mr. Rifkin and Mr. Frederick made an objection about the relationships, that they only had partial information about, and about Proskauer's role as being an advocate for the Nationals. And that was made right in the presence of all three arbitrators. And all three arbitrators sat there like stones. They did not say a word. They did not make any disclosure.

And Mr. Wilpon, in particular, knew that right at that very time Proskauer was in the middle of trying to close up his case.

If you look at tab seven, your Honor, which is -- excuse me, tab eight, which is the final order and judgment in that case in which that class action case by the Wilpon employees against Wilpon family partnership, you'll see that the case, the settlement agreement had been executed on February the 27th, 2012, which was 26 days after we had sent Mr. Wilpon a copy of Mr. Rifkin's February 1st letter. That there were amendments where the lawyers had amended the settlement agreement on March the 23rd, which was just ten days before the hearing and on July 9th of 2012, after the hearing had taken place.

The -- This isn't a case in which, as the Nationals would have you believe, we were just sitting on our rights. We -- we knew they had this affirmative duty. They wouldn't exercise their affirmative duty. And we then kept pressing them, and all we got was what somebody might characterize as stonewalling.

Your Honor, this isn't an issue, a complicated legal issue involving these kinds of failures to disclose. And the law in the First

Circuit, I would submit, is crystal clear. And under tab two.

THE COURT: First Department you mean.

MR. WEINER: First Department. What did I say?

MR. PHILLIPS: First Circuit.

MR. WEINER: I'm sorry. I'm sorry. The law of the First Department is crystal clear. And under tab two we have submitted copies of three opinions that have been -- that the parties have been talking about. The first is the case that the decision that we -- that MASN discussed extensively in its brief of the First Department in the Kern case. Where the Court said, and we have highlighted this, "The appearance of impropriety or partiality is sufficient to warrant vacatur of an award. Furthermore, it's only necessary to demonstrate the potential for bias to find misconduct. Consequently, it is incumbent upon the arbitrator to disclose any relationship which raises even a suggestion of bias."

THE COURT: So, look, I think there is no question that it's troubling that you didn't disclose this. Certainly I'm troubled by it. But did it matter. Did it result in a biased decision? Did it have to matter?

MR. WEINER: It didn't have to matter. These cases set forth a wholly objective standard of whether it would have mattered to a reasonable person. And the federal cases that are cited in Mr. Hall's brief are exactly to that extent. And if there were any inconsistency between the New York cases and the federal cases, obviously under the FAA the federal cases would govern. It is a wholly objective standard.

Now, the Nationals do say --

THE COURT: Have you found any New York cases?

MR. WEINER I think that's exactly what -- that's exactly what Kern says. They say that the appearance of impropriety is sufficient. Not that it had to -- not that it had to have taken place. Not that it had to have been demonstrated. That the sole burden on the parties seeking vacatur is the appearance. And that's for good reason, your Honor. The reason is because the people who are in the best position to know in these matters are the arbitrators themselves. They are the ones who know what information they have. They are the ones who can reveal it. And as the Court of Appeals said in the J.P. Stevens case some years ago, the whole purpose

of requiring this disclosure is so you keep out of the courts. If a disclosure is made, you don't have to come in for vacatur. But when the disclosure is made, in order to encourage disclosure in all of these cases, the policy is exactly as set forth in Kern. The only burden that's on the parties seeking vacatur is to show the appearance of impropriety.

Now, the Nationals do argue for a different result. The Nationals argue, contrary to Kern, contrary to the case by the way that followed Kern, the SOMA case, which we have also attached here as part of tabs, contrary to Kern, contrary to SOMA, the Nationals say oh, no. There is a subjective test and you have to, when there has been no disclosure, you have to come in and show that the failure of disclosure is what actually caused -- caused the result in your case.

The interesting thing is they couldn't find any authority for that proposition. And the principal authority that they cited for that proposition is a case that we have also reproduced for your Honor under tab two, the Moran case. And as your Honor will see, the Moran case that they cite and discuss at great length in their -- in their brief, the Moran case doesn't deal with disclosure at

all. The Moran case dealt with a petitioner who claimed that the arbitrator had dozed off when the proof showed he hadn't, and complained the arbitrator had limited some cross examination questions and found the petitioner not to be a trustworthy witness. And that's the principal case when you see their brief on which -- on which they rely for that proposition.

Your Honor, I think it's important to note that even as of today there has been no affirmative disclosure of what these relationships were. And to the extent that we're able to ask it, we intend to ask your Honor to require them to make these disclosures. The only -- They have offered some affidavits in which, by the way, they don't deny one fact that I've stated here. But they offer an affidavit of Mr. Ruskin, the principal Proskauer partner in the matter, in which he very carefully only addresses the things that we know and have since either knew then or most of which we subsequently discovered. Makes no new disclosures. No new effort to make any new disclosure. And doesn't provide any additional information other than what we ferreted out when we shouldn't have had to ferret it out.

THE COURT: So, what about irreparable

injury?

MR. WEINER: If -- if we -- There are three aspects of the irreparable issue in this case.

THE COURT: If you pay the money, the TV rights won't be terminated.

MR. WEINER: If we could pay the money, and that's the problem.

THE COURT: Why can't you pay?

MR. WEINER: If your Honor will see Mr. Haley's latest affidavit which we just --

MR. HALL: I handed it up.

MR. WEINER: -- which we just handed up in which Mr. Haley says that this is the worst time of the year for MASN. What happens is we get paid monthly by the affiliates, the people who distribute our signal. But we have enormous expenses all during the baseball season. By the time the baseball season is over, we paid all the expenses of production. By the time we finished all of that, we're left at this time of the year literally with three and a half million dollars in the bank. That's what we have.

THE COURT: Weren't you agreeable to putting the money in escrow in return for a standstill agreement?

MR. WEINER: In return for a standstill that

would have continued indefinitely we were willing to go to the bank and borrow what was then $10 million and have a one time payment and over with even though we were pressing the bond is what we really thought made sense. But that would have been a one time, done.

Right now they are claiming double that. Right now they are claiming $20 million, because as of -- as of September the 1st, the total rights fees will be due, and they come to, under their claim, an additional 20 million.

THE COURT: It is 20 million, isn't it? There is no dispute about that.

MR. WEINER: No. There is no dispute. There are adjustments for interests and things they are claiming, but 20 million is the number. We have three and a half million dollars in the bank. Between now and September 1st we will take in more money. We will take in $20 million. We'll have roughly $20 million. But that $20 million is needed to make the lower payments that we owe under Bortz. MASN is required to make the exact same payments to both teams. And MASN still has to make its fourth quarter payment of what we have contended we actually owe them, the Bortz calculation. And regardless of

what happens here, we have to pay the Nationals $10 million that we owe them, that we agree we owe them. And we have to pay the Orioles $10 million, because we have to pay both teams or MASN has to pay both teams. That then wipes out all the cash.

What they are asking for is $20 million in addition to the money that we acknowledge we have to pay as our last payment. There is no dispute about that. And Mr. Haley's affidavit spells that out in detail.

So what do we have here? What we have here is then that we're in a position where our money will pretty much be expended. We'll be accumulating money during the year. We won't owe them any more rights, payments until 2015. What we're saying is that because we don't have the cash now, we would ask your Honor that for this brief period, until the case gets decided, that -- until you decide whether --

THE COURT: Until which case gets decided?

MR. WEINER: This case, until you decide the vacatur, that your Honor -- that your Honor continue the injunction that you entered as a TRO before. Let us post the bond. It's just another short period of time until this case gets resolved. And then we'll know whether the award has been vacated or not.

THE COURT: Let me ask you a question. If I ended up vacating the arbitration award, we're not anywhere near that point obviously, but if that ended up happening, what would happen to the pending arbitration?

MR. WEINER: Well, it would then go back -- You mean the pending AAA arbitration?

THE COURT: The Section 8 arbitration.

MR. WEINER: I'm not sure whether it would continue or wait until the next award gets issued because one of the -- one of the claims that the Orioles are making in that arbitration is that if your Honor were not to vacate, it would be because of faulty instructions given by Major League Baseball, for which Major League Baseball would be liable to the Orioles. So, we might very well, if your Honor vacates the award, we might very well want to hold that -- that proceeding in obeyance until an award was issued.

MR. HALL: Your Honor, if I could just chime in. I think if you were to vacate the award, it may not eliminate all claims. It would gut a lot of them. We said in the July 31, 2014 letter to AAA, Exhibit 17 to my moving affidavit, in which we enclosed a copy of our petition here, and we said in

the event that the petition to vacate the award is denied, claimants won't incur substantial damages. It's the damage claims that are there. So, if you were to vacate, I can't say today, dispose of all claims, but it would certainly gut the arbitration matter.

THE COURT: All right. So, Mr. Weiner, assuming I don't agree that you don't have the money, I'll read the affidavit that you handed up today, let's say for sake of argument that I don't agree with that, and I think you can pay the 20 million, doesn't that eliminate any irreparable harm? TV rights won't be terminated once you pay the disputed amount.

MR. WEINER: The TV rights will not be terminated. But then we're subject to them then wanting to drag this out until we get to the next time when I we would have to pay under that higher amount that they are claiming.

MR. HALL: As I explained last time, your Honor, there are other complications. Number one, once the money gets paid out, baseball taxes it. There is a revenue share. They take between 14 and 34 percent. If we win, we try to get that back. Under the agreement, settlement agreement we are

required to pay the same amount to the Orioles. Suddenly we're paying -- we're paying double. And all of this is based on an award, your Honor, that isn't yet final. You know, we're -- we're -- this is the last step in the process, and as I said, last time, even if they had a judgment, we could bond it pending appeal and not pay them. So it's -- it's -- On top of it they say in their papers we need this money. We want to sign long-term players. Once they start committing the money, it makes it a lot tougher for us to get it back. It's a complicated situation once the money goes out the door.

THE COURT: If the RSDC award is ultimately upheld, MASN is financially insolvent, is that what you're saying?

MR. WEINER: No. If it's upheld, MASN is down to a five percent operating margin, which is not sustainable. And if any -- any one of a number of potential events were to occur, such as one of our affiliates canceling the contract, one of our affiliates themselves going belly up, it throws the whole company in jeopardy.

THE COURT: Are you no longer arguing that irreparable injury would be termination of the TV rights, in that the Nationals can't threaten to

coerce you into paying what is owed?

MR. WEINER: No. We are arguing it. I just moved to the next argument in response to your question. We think it's grossly improper for them to say in effect what we have said in our brief, give us your money or we'll shoot you. That is putting us -- that's putting us in a position we shouldn't be put in.

THE COURT: Isn't there case law that says that that is perfectly okay?

MR. WEINER: Well, it's perfectly okay in some circumstances. But in this case, they're claiming the money, because of an award, which has not yet for arbitration purposes been confirmed, not yet a money judgment. And until and unless it's confirmed, we don't think we owe it. We should be required to pay it in any event.

THE COURT: It's not like a case where the party against whom an injunction is sought is seeking money. But it's just on its own decided what it thinks it's entitled to. That's not this case. Because this case there is an arbitration award, which is determined that they are owed that amount of money.

MR. WEINER: Right. If that arbitration --

If there is -- At this point if your Honor is of the view that there is a strong likelihood of the award being vacated, then that cuts against the use of the award.

THE COURT: It's irreparable injury really the most important factor in a motion for preliminary injunction? Irreparable injury is critical, isn't it?

MR. WEINER: I think all three are critical.

THE COURT: Okay. Courts have said irreparable injury is the most important factor.

MR. WEINER: There are some decisions that say that. And there are others that go off entirely on the issue of whether there is a likelihood of succeeding. But I think in part, because if there is a likelihood of succeeding, then the injury -- then the request for payment loses its force. If I'm asking for something that I know I'm ultimately going to have to give back, in the balance of the equities, why should I get that benefit. And I think that's exactly what the Nationals are doing here. If they are asking for something the court, based on what the presentations that have been made now, make it likely that they are going to have to likely give it back, then we shouldn't be responsible to pay it under the

balance of equities factor.

MR. HALL: Your Honor, we cited in our TRO brief a Justice Fried decision. In there there was a stockholder that was obligated to make additional equity contributions to the company upon certain demands and certain circumstances. Demands were made. He didn't pay the money. And he was sent a default notice saying if you don't pay within 30 days, we're going to take away this right, this voting right and this voting right. So, he sued and there was a preliminary injunction. Same situation. All he had to do, judge, to avoid these Draconian measures is to pay the amount.

THE COURT: There was no arbitration award?

MR. HALL: That's correct. But Justice Fried did not look at it that way. He looked at irreparable harm being the loss of the voting rights. The Orioles also cite to other cases on page 22 of their brief, none New York, but I think they are very persuasive.

MR. WEINER: We have laid out what we believe to be the full pantry of the irreparable harm. In the affidavit portions that appear, your Honor, in the book under tabs 18 and 19 and 20.

THE COURT: Okay. Thank you. All right.

Mr. Neuwirth.

MR. NEUWIRTH: Good morning, your Honor.

THE COURT: Let me ask you a question. If this case is before me, it's an important case. I have to decide important issues. What if it turned out after the case is over, it's resolved, what if it turned out that Mr. Hall was representing me in a family matter, wouldn't that disturb you greatly if I hasn't disclosed that to you?

MR. NEUWIRTH: Certainly it would disturb me. However --

THE COURT: Isn't that what happened here?

MR. NEUWIRTH: Very respectfully, your Honor, we don't think that's what happened here at all. First, it is indisputable, even from the documents that you were shown today by the attorneys, everyone was aware that Proskauer represents on a regular basis Major League Baseball, Major League Baseball Clubs. And they said in all of their correspondence that's highlighted in Mr. Ruskin's declaration, and I have copies for your Honor if you need it, they have said repeatedly we know that you're representing at least one of the clubs on the RSDC panel.

Now this is not a situation where somebody suddenly --

THE COURT: Why didn't they disclose it? Just basic fundamental notions of fair play. Why didn't they disclose it?

MR. NEUWIRTH: There was none. This was not a case of nondisclosure. As Mr. Ruskin details in his declaration, the Orioles, whose owner, Mr. Angelos, sits on the Executive Committee of Major League Baseball, was very fully aware of the role that Proskauer plays in representing different firms. As -- as we laid out in our papers, the law is very, very clear in New York that arbitrators do not have authority to disqualify lawyers. That the procedure that has to be followed, as we lay out in our papers, is that you either challenge the arbitration process or you try to change who the arbitrators are.

THE COURT: They didn't have the information to make the fullest, most robust challenge, because it wasn't disclosed to them. All the cases in New York, Appellate Division, First Department, if there is one thing that's clear, arbitrators are suppose to disclose conflicts of interest.

MR. NEUWIRTH: Well, we don't believe first that there was a nondisclosure here for the reasons laid forth in Mr. Ruskin's declaration. All of the correspondence shows that they knew about this.

Two, critical here is that MASN and the Orioles were both involved in the arbitration. Had separate counsel. They both chose to go ahead with the arbitration, being fully aware that Proskauer had these representations. And as one of the letters from Proskauer pointed out at the time, and we believe this is what happened, they made a decision really to game this in a way that New York law says is inappropriate.

What they did was they said, let's go through with the arbitration. We know there are these issues with Proskauer. Mr. Ostertag, as they showed you from MLB, said go ask the various clubs. But they decided to go ahead with the arbitration.

THE COURT: You're saying they knew before the hearing that Proskauer, I guess everybody knew that Proskauer represented Major League Baseball. It's widely known. You're saying that they knew before the hearing that Proskauer also was representing the Mets, the Pirates and the Ravens?

MR. NEUWIRTH: They weren't representing all three of them. That's clear. But with respect to the Mets, everybody --

THE COURT: They weren't representing all three?

MR. NEUWIRTH: No. I think Mr. Ruskin's declaration says that there was representation of two of them at the time and they were not representing the Pirates.

THE COURT: They were not representing the Pirates, okay.

MR. NEUWIRTH: However, the suggestion today by Mr. Weiner, who I hold in very high regard, but his suggestion today that people aren't fully aware that the Wilpon family is associated with Sterling Equities is, I think, not credible. Everybody knows that in Major League Baseball. And the public docket --

THE COURT: No. But did they know that Proskauer was representing Sterling at the time?

MR. NEUWIRTH: It was something that was completely public information and readily available to anyone to check. The docket of the case --

THE COURT: Is the burden on them to seek out that information or is it on the arbiter to disclose the conflict of interest?

MR. NEUWIRTH: The first issue is what actually happened. What did they know. The second issue is, did it have any impact on the proceedings. And third is what's the standard that's being applied

to determine whether there are conflicts.

So, first in terms of what they knew, we believe that all of the correspondence that they sent, including the correspondence that you were shown this morning, shows that they knew that Proskauer was representing, as they put it, at least one member of the panel and they weren't representing the panel members. They were representing the teams that these panel members were affiliated with. And they said at least in all of their correspondence. So, they were not suggesting that they only thought there was one and there might not be anything else. They were aware of it.

Two, they took no action, which the law says in New York they are required to, to try to either terminate or change the arbitration panel. They decided, notwithstanding what they knew, to go ahead with the proceeding.

The Sterling Equities case was all over the press. I'm sure everyone in this courtroom remembers it. It was front page news, that there were issues related to financing the Sterling Equities and what would that mean for the Mets. And that was all public information during the period long before, long before the arbitration panel here had its

decision issued this year. That was all public in 2012.

Now, another point that your Honor referred to, which is critical here, is that it is not clear whatsoever, there is no evidence whatsoever that the fact that Proskauer was representing the Nationals had any impact in favor of the Nationals in its decision. The decision that was rendered was over $58 million less per year than what the Nationals asked for. 58 million less per year over five years. That's more than 250 million. It's almost 290 million.

THE COURT: But obviously it was favorable to your client and unfavorable to the Orioles and MASN. Because you initially filed a motion to confirm where they are moving to vacate. So, just on its face, you know, it's a decision that was favorable to the Nationals.

MR. NEUWIRTH: Well, I would put it a little bit differently, your Honor. As we saw last week or ten days ago, when we were before your Honor, Section 2.J.3. of the 2005 agreement expressly says that decisions of the RSDC are final and binding. And the Nationals read this decision and made a determination that there was not a basis to challenge it under the

parties agreement. And so the Nationals sought to confirm the award, because certainly it was better than zero, but it was not remotely like what the Nationals had hoped to achieve through this process. In fact, the decision was only $20 million a year more than what it was that MASN had pushed for at the hearing. So, just looking at the outcome, the outcome here was incredibly more favorable to MASN.

I think what's really going on here, your Honor, and I should make one more point on the question of bias. You know, MASN and the Orioles have focused tremendously on the role of Proskauer. But they completely ignore what could arguably have been the same evidence bias from their decision to use Bortz Media Sports as their consultant and expert during this proceeding. They admit in their papers that Bortz is regularly used by the RSDC as a consultant.

THE COURT: Did the RSDC members disclose that?

MR. NEUWIRTH: It's something that was known. It was known the same way that it was known that Proskauer regularly represents teams in Major League Baseball. The fact that Proskauer is a leading sports law firm and very involved in Major League

Baseball and teams is something that's been known to these people forever.

THE COURT: Let me ask you. I'm asking your opinion. Should Proskauer have been disqualified in this arbitration, given that they were representing everyone? I thought it was all three. They are representing the Nationals. They are representing baseball. I thought all three. I'll ask Mr. Hall about that. But should they have been disqualified in your opinion?

MR. NEUWIRTH: In my opinion.

THE COURT: I know you're saying it doesn't matter. Should they have been disqualified?

MR. NEUWIRTH: My answer would be they should not have been disqualified, because under these circumstances the argument was waived. Let me explain what I mean by that. I think that it's a very -- These issues of conflicts with respect to baseball and internal private organizations are, I think, complicated and nuanced. And certainly we respect fully and have no basis to challenge your Honor's general questions that you've raised today about this type of circumstance. However, the reality of what happened here is that everybody knew.

Now I think it's important also to highlight

the extent to which the grounds shifted here. With all of this knowledge, the first thing that happened -- the first thing that happened was that the Orioles entered into this process fully knowledgeable that Proskauer would be representing the Nationals, with just as much knowledge that they had later about the role that Proskauer has for three months, from October through January, is detailed in Mr. Ruskin's declaration. Mr. Rifkin of Mr. Weiner's firm never made a complaint about involvement of Proskauer. In fact, they submitted documents to the RSBC suggesting scheduling based on when both Mr. Weiner's firm and Proskauer would be available. It was only on the eve of the RSBC process getting underway in January of 2012 that the issue was raised for the first time about Proskauer also having these other representations. So, with all the same knowledge, they suddenly raise this issue, which I think fell to the National like an ploy on the eve of a hearing to prevent them from using their counsel of choice.

Proskauer, as everybody knew, had been representing the Nationals since 2005, when the Lerner family first bought the team. So, on the eve of the hearing, these issues first come up. The

first issue that was raised was not about Major League Baseball. The first issue that was raised was that Proskauer represented the Orioles they said and so Proskauer had a conflict. When that argument fizzled out, they switched to a new argument. They said, you represent Major League Baseball and some of the teams. This was classic shifting ground. The information didn't change. They just kept shifting the argument. Frankly, I'm reminded of that today with this new declaration that's been submitted.

We were here for a conference with your chief clerk, where it was offered to put this money in escrow. There was never a comment that the money wasn't available. We were here before your Honor ten days ago for a TRO hearing. There was not the remotest suggestion that the Orioles and MASN didn't have the money. These are very wealthy baseball teams. The suggestion today in an affidavit filed on Friday, after all the papers were due and given to us last night or an affidavit signed yesterday, I'm sorry, based on financial numbers that supposedly were given out on Friday, to suddenly say that they don't have money, is another example of the ground shifting. This is what has happened all throughout this process. The arguments keep changing.

I think if you look at Mr. Haley's declaration that was given to you today, it says on page two that earlier this year MASN distributed $60 million. What does that mean? MASN has an 85 percent ownership interest. So, they distributed $60 million they had in the bank. Eighty-five percent of it went to themselves.

Now, paragraph six acknowledges that they have $20 million under their calculation that they have to pay. And what does it say? It says MASN will be accumulating cash from its affiliates. Who are those affiliates? Those affiliates are the Orioles and BOLP.

The fact is that the suggestion on the eve of this hearing that they don't have the money to pay is frankly outlandish. And if I could hand up to your Honor, and we would request that if it would please the Court, we be permitted to submit this to your Honor under seal, because you'll see it's very sensitive financial information. If I may approach the Court to hand that up.

MR. HALL: We would join in that request, your Honor.

MR. NEUWIRTH: One copy for the clerk as well. Thank you. You can see on this business plan,

if you look at the net income line, this was from last fall, projected income for these four years, including 2014. And this is projected income after all the distributions are made to MASN and the -- to the Orioles and the Nationals. It corresponds directly to what we see in the declaration that they took 60 million and distributed it. There is no issue here with their ability to pay.

THE COURT: You're saying it's correct that at this very moment they have the money. They could borrow it if they had to.

MR. NEUWIRTH: Respectfully, we don't understand there to be a genuine cash flow problem. If this were to be taken seriously, they would have had to tell you they got a cash flow problem just to pay the $20 million that they think they are suppose to pay on September 1st. But paragraph six admits that they don't have a cash flow problem to do that. Just like they don't have a cash flow problem to pay this extra money, which is why they never raised it before. This paragraph says the amount presently required to be paid to the Clubs on September 1st is approximately $10 million each. MASN will be accumulating cash from its affiliates. Whether that means the Orioles or whether it means cable

affiliates with which it does business, they know that they can bring in the cash. They have had this obligation. It's in the 2005 agreement. So, to say that they have a few thousand dollars available and to do it under these circumstances where they never raised it before is not credible.

Now, I think it's very important, your Honor, to step back and really look at what's going on here. Because in fairness, this 2005 agreement that everybody agrees governs here was a tremendously favorable and remains a tremendously favorable agreement for MASN and the Orioles. At the outset they got a $75 million cash payment from new owners of the Nationals. They got 90 percent ownership of MASN through the end of 2011, which means whatever money was left over on that net income line, 90 percent of it goes to them. Starting in 2012, that amount was reduced, is reduced just one percent a year.

So, right now they still have approximately 85 percent ownership interest of MASN and they will never go down below 67 percent. In addition, they have complete or virtually complete control of MASN. They get the exclusive rights to National games. The Nationals don't get to sell those rights. And as we

know from 2006 to 2011, they were entitled to collect to pay the Nationals amounts per year that are indisputably below the mark rates.

THE COURT: Are you saying they are better off because the Nationals showed up in there?

MR. NEUWIRTH: What we're saying is -- what we're saying is that however they may have felt about the Nationals coming, this was a tremendously favorable agreement to them. They may not have wanted the Nationals to come, but they entered an agreement.

THE COURT: It didn't turn out to be better for them. You're not suggesting that, are you?

MR. NEUWIRTH: What I'm suggesting is, the decision they made in 2005 was to enter an agreement with Major League Baseball, which they have told you was intended to settle their dispute with Major League Baseball about whether or not to bring the Nationals to Washington. They entered that agreement, and it gives them many benefits that they agreed to take.

It gives only a couple of things to the Nationals. One of the things it gives the Nationals, starting in 2012 the Nationals were suppose to start getting fair market value for the television rights,

which they have to give to MASN. One of the only other things that the Nationals were given in this agreement was that as a protection against MASN and the Orioles unilaterally deciding just not to pay them, it said that if they failed to pay money that is owed, the Nationals have the right to terminate the agreement.

Now, if that right is only allowed to put into effect if they actually don't pay. It's very important to remember what's going on here. MASN and the Orioles and BOLP, they don't disagree that the amounts that were paid from 2006 to 2011 are no longer the proper amounts to be paid to the Nationals. What they are saying is, even though the RSDC decision has come down, they should be entitled to pick how much money they give to the Nationals now above those old rates. And they are saying to your Honor, we believe that the Bortz method is the right method. The Bortz method that we presented to your Honor to the RSDC. Therefore, that's all we have to pay the Nationals. We don't have to pay the Nationals the amount that the RSDC said they should be paid.

Now, there is no rational reason why in the present moment, when there is an RSDC decision, which

they agreed is final and binding, in this interim period, they should be entitled to say no. We don't have to pay you even on an interim basis the amounts that the RSDC said we should pay you. We should get to pick. We're just going to pay you what our consultants within the RSDC said is the right amount. They make a big deal in their papers.

THE COURT: You can't blackmail them, telling them that you don't pay up, the amount that they vigorously dispute, if you don't pay up, then you're going to terminate their TV rights. They are saying you can't legally, you can't blackmail them.

MR. NEUWIRTH: Well, I think --

THE COURT: Can you?

MR. NEUWIRTH: Well, I think that's not a reasonable spin for two reasons. First, I'm talking about their argument. First, the contract unambiguously says that if they don't pay the amounts that are due and owing, the only protection the Nationals have under this agreement, where they have the exclusive right to broadcast the Nationals' games, is that the Nationals can say to them, if you don't pay us, we're going to terminate. They can clearly remedy that.

THE COURT: A preliminary injunction wouldn't

take that right away from them. The Nationals in the end would always have that right if they prevail. It would be a temporary suspension of that right. This is not the case that was on before you, that's a case that strikes me as one that will never end. It's four or five years old. This is a motion -- This case is a motion to vacate an arbitration award. Those cases get decided very quickly. So, the determination right, if the injunction were granted, would be temporarily suspended.

MR. NEUWIRTH: Right.

THE COURT: Not eviscerated.

MR. NEUWIRTH: Well, but it would be temporarily suspended. There is a real problem that goes right to the balancing of the equities. Because first, notwithstanding this new declaration, there clearly is no harm whatsoever that would come, certainly no irreparable harm that would come to these parties from paying the money on an interim basis as requested by the Commissioner with the understanding that the Nationals have --

THE COURT: The irreparable harm would come from having their TV rights terminated.

MR. NEUWIRTH: But the TV rights won't be terminated if they make that payment.

THE COURT: So, you're blackmailing them.

MR. NEUWIRTH: We're not blackmailing them at all. This is not blackmail at all. There is an RSDC decision which says they owe the money, and they agree that would be final and binding. They are taking the position that even though that position has come down, they have the right to just pick what amount they are going to pay until this all gets resolved. They have picked this Bortz number, which they say is the right number, but the RSDC expressly held that is not the right number. Two -- It's not the right number under the agreed terms of the contract, which said that it's the RSDC's regular method.

Two. The contract that they agreed to says that if you don't pay the right amounts, the only defense that the Nationals have, since you have an exclusive right to broadcast their games, is they can tell you they will terminate if you don't pay. Now, this is not blackmail. This is what they agreed to in the contract as the only protection the Nationals have. Otherwise they could do what they are doing now, just pick whatever number they want to pay and say stick with it.

Third --

THE COURT: But, of course, they are claiming that the arbitration process was tainted. That's an important fact, isn't it?

MR. NEUWIRTH: It's an important fact. However, we respectfully submit that they do not have any likelihood whatsoever of succeeding on those claims. I think it's telling in their binder they only put two pages of the RSBC's decision. If we could hand this up to your Honor. If one looks at the full text of the RSBC decision, their main argument about why this decision is purportedly wrong is because they say, that is the RSBC didn't apply its established method, which they say is the Bortz method. Who is saying that? The president of Bortz. That's their declarant. Clearly an interested party.

If you look starting on page four, the decision here is very clear. I think this highlights why they have no chance of success on the merits. It says, "The parties in their agreement", this is at nine, bottom of page four, "The parties in their agreement instruct the Committee to arrive at the fair market value of the television rights at issue using the Committee's established methodology for evaluating all other related party telecast agreements within the industry. Thus we begin with

an overview of that methodology." They then discuss, we then see at the bottom of page five it says, "Typically the Committee's valuation includes a bottom up or close market analysis of the related parties revenue and expenses for the reviewed period. An analysis often referred to as the Bortz approach, because Bortz Media and Sports Group has utilized this analysis as retained by the Committee as a consultant." Now, this is the key line here starting with however. "However, to refer to the bottom up or closed market approach advocated by the Orioles and MASN, as the Bortz approach is somewhat of a misnomer, because even Bortz Media does not estimate the fair market value of a club's broadcasting rights by reviewing the networks' revenue and expenses and nothing more. Rather, each previous analysis by Bortz Media for the Committee has included additional information relevant to the Committee's deliberations, including, for example, comparisons of the Club's total rights fees and third-party rights fees of Clubs in comparable major league markets." Then they give a set of examples. Then they say below, "Nevertheless, even if the so-called Bortz approach, whereas myopic as MASN and the Orioles now suggest, the agreement specifies that if a breach,

that the Committee should establish the methodology." And they go through and explain what that is.

Now, just to show that this was fair, you turn to the bottom of page seven, they reject the Nationals too. They say the Nationals, on the other hand, assert that the RSDC establish methodology, primarily use an analysis of rights fees obtained by clubs in comparable markets. While RSDC has considered market comparables as a check or point of reference, it has never relied exclusively or even predominantly in comparables in determining whether a rights is fair market value. They then discuss their methodology.

This is a lengthy opinion. We read this and we said, this does exactly what the contract said they were suppose to do. There is not a basis to challenge this. Is the Nationals thrilled with the award? Not at all. It cost them a lot of money compared to what they thought they should get. To say this is an award that was biased, against anybody, they did exactly what these parties agreed in the 2005 agreement should be done. And they stand here and say to this Court, oh, they were suppose to use the Bortz methodology. What they leave out and redacted from any of the copies they gave you is that

passage I just read, where the RSDC said what you have given us that you claim is the Bortz methodology, even though it's coming from Bortz, is not the form of Bortz methodology that we use when we have retained Bortz to do work for us. They said the same thing to the Nationals about their approach.

THE COURT: All right. I want to finish the argument before the lunch hour. We'll be a little bit late. I want to give Mr. Buckley a chance to be heard.

MR. NEUWIRTH: May I say one thing that will take less than two minutes to conclude?

THE COURT: Sure.

MR. NEUWIRTH: The balance of the equities and the balance of the harms here really does matter. What this is all about, we respectfully submit, is that, as I think is clear from all of the papers that the Orioles and MASN has submitted, they don't love this deal that they entered in 2005. It is clear from the record, as detailed in the declaration of Mr. Cohen that we gave you, that part of the reason that it took so long to get the RSDC decision out was because Major League Baseball was trying to facilitate negotiations that the Orioles and MASN were requesting to renegotiate the whole arrangement.

And the payments that they didn't mention today, but when MLB made some bridge payments to the Nationals in 2013 to represent the difference between what the Orioles want to pay and what the RSDC, they understood was going to award, that was to permit these negotiations to take place.

Now, what does it mean for you to temporarily suspend MASN's right to terminate if they don't pay. We know if you deny the preliminary injunction, they are going to pay the money and the right to terminate will never be exercised. There is an easy solution here. There is no harm from them. They cannot dispute that the Nationals can pay them back. As Mr. Cohen explains in his declaration, while the Nationals are a very well financed team, it means something to have to change your cash flow and suddenly go to the money that you've allocated for one purpose, to now start using it for what was suppose to be your expected cash flow to cover higher players and the like. That doesn't mean they can't pay the money back in a second, but it means it is going to constrain them.

Why is this going on? Because MASN and the Orioles, if you grant this injunction during this period when there is a process to try to challenge

the RSBC decision, are going to have additional leverage to try to force the Nationals back to the negotiating table to renegotiate the whole deal. That's what's been going on here for two years. The goal here is to try to undue a 2005 agreement that they agree to be bound by. And if this preliminary injunction is granted, not only will it hurt the Nationals' ability to fund their ongoing expenses, which is really a cash flow problem, but two, it will suddenly change the whole balance of power in this partnership agreement and give MASN the ability to do exactly what this termination right was suppose to prevent. To prevent them from holding the Nationals hostage by not paying them. And this termination right was a bargain for right. It's one of the few things the Nationals get. And at the end of the day, they admit that the old amounts from 2006 to 2011 are not the proper amounts. They just want to use this discredited Bortz method to pay us now instead of the amount directed by the RSDC award, which they agree to be final and binding.

THE COURT: Thank you. Mr. Buckley.

MR. BUCKLEY: Thank you. Your Honor, it's our position that MASN'S motion for a preliminary injunction should be denied and can be denied solely

on the basis that it has failed to show by clear and convincing evidence that it will suffer irreparable harm if it complies with the Commissioner's directive of July 30th, 2014 and makes limited payments that the Commissioner has ordered.

I'm going to briefly review the chronology and how we got here. So, on June 30 of this year the Commissioner advised the parties that the RSDC had decided the question of the fair market value of the rights fees and provided a copy of the decision and directed MASN to comply with it. On July 2nd MASN, emphasize MASN, and the Baltimore Orioles Limited Partnership initiated a AAA arbitration pursuant to Section 8.C. of the March 2005 agreement. So, they recognized that the forum to which they should repair, to air their grievances with regard to the RSDC decision was the AAA arbitration panel, which was provided for in the March 2005 agreement.

But on July 24th, the Nationals petitioned the Commissioner to enforce and confirm the RSDC decision. Invoke three basis of the Commissioner's authority. The first one was the Major League Baseball Constitution. The second one is the March 2005 agreement. The third was the MASN partnership agreement itself.

Then on July 30 the Commissioner issued his interim ruling and directive. And there he determined that pursuant to those three arbitration agreements, which I'll discuss a bit more in a moment, he had authority to determine the extent to which the RSDC decision should be implemented pending the outcome of the AAA arbitration process. As you know, he concluded that for now all that MASN was required to do is to make the payments beginning in 2014 to the Nats, not the payments due for 2012 and 2013. Further that MASN --

THE COURT: The Nationals are saying if they don't get the, what would be 20 million --

MR. BUCKLEY: Right.

THE COURT: -- they will terminate the TV rights. Talking about 20 million.

MR. BUCKLEY: That's right. We're talking about 20 million is just the additional payments that are due for 2014. In other words, the Commissioner determined that the RSDC decision should not be implemented now with regard to the back payments that were due beginning in 2012 and 2013. He provided sensible relief from that pending outcome of the AAA process. He said to MASN, you, MASN, don't have to pay the same amount to the Orioles. You can refrain

from making any additional payments that would be required by the RSDC decision.

Next he said to the Nationals, upon receipt of the 2014 payment, you are to withdraw your Notice of Default of May 30, 2014. And that if as a result of the AAA process, it is determined that the RSDC decision should be overturned, that there were overpayments, you are to reimburse MASN with interest for the amount of any overpayments.

The Nationals said they could comply with the Commissioner's order. They will withdraw the Notice of Default upon the May 30th of receipt of the 2014 payments. Again, we'll talk about that in terms of $20 million. That's the additional payment over and above what MASN believes is required to pay.

So, upon receipt of that payment, we'll withdraw that Notice of Default. And further that it agrees it will repay, if the RSDC decision is vacated or modified, any overpayments back to MASN with interest. The Commissioner will ensure that the Nationals comply with that agreement. That leaves only, therefore, the question of MASN's financial ability to make the payment.

Until today MASN has never claimed it would be in any financial hardship in complying with the

Commissioner's order to make the $20 million additional payment. Again, the Commissioner issued his order on July 30. Today is August 18th. Almost three weeks there has been no complaint.

When we appeared before your law secretary, Ms. Edelman on August 7th, MASN said at that time it was going to pay the entire $20 million into escrow. It had the money then. Today it is contending it has some cash flow issues. If it has a cash flow issue, if MASN indeed has a cash flow issue and can't borrow the funds, I'm assuming it has a quite large revolving line of credit which it can draw upon, it doesn't say you can't have access through financing to make the payment. It just says the cash in itself at this particular moment in time is low, it agrees it will have more by September 1, if its cash is low, go back to the Commissioner. Present its case. Work out a reasonable payment plan. And the Commissioner, if it's appropriate, certainly would be willing to have an open mind with respect to listening to any cash flow problems that the -- that MASN may have.

My point is that the forum to which they should go for relief from the Commissioner's directive is the Commissioner of Baseball. Neither party has challenged --

THE COURT: Let me ask you a question. Do you have the agreement?

MR. BUCKLEY: I do.

THE COURT: The 2005 agreement.

MR. BUCKLEY: I do. I just say that neither party has challenged --

THE COURT: I have it here.

MR. BUCKLEY: Neither party has challenged the Commissioner's authority as arbitrator.

THE COURT: I'm wondering, am I the only one reading it this way. Right now 2.J.3 talks about Nationals and the RSDC seeks to vacate and modify.

MR. BUCKLEY: Correct.

THE COURT: It doesn't say where.

MR. BUCKLEY: Correct.

THE COURT: And then Section 8 starts out by carving out Section 2.J. It says, except as otherwise provided in several subsections, including Subsection 2.J, you know, the following dispute resolution will apply.

MR. BUCKLEY: Correct. I think I can help you with that.

THE COURT: Yes.

MR. BUCKLEY: There is really two totally separate issues here.

THE COURT: In a way that makes sense. Because if 2.J. is an arbitration, and I know you were suggesting that it wasn't, but the RSDC Committee itself referred to it as arbitration, the Nationals may say and the Orioles are disputing it as an arbitration, if that was an arbitration, do you go from an arbitration to an arbitration. Do you understand my question?

MR. BUCKLEY: I understand why you would initially be perplexed about that. Let me explain. First of all, it's common to have a multi tiered dispute resolution process. And this is what the parties negotiated here. They wanted a multi tier. It's not unusual to have one, two, even three levels of internal dispute resolution. That's not unusual at all.

The issue in the 2.J.3. arbitration, we'll call it arbitration or process, is different from the issues in the 8.C. AAA arbitration in the following two respects. First, in 2.J. the parties were MASN and the Nationals. And the issue was what's the fair market value of the Nationals' right fees for a given period of time. Okay.

In 8.C. the parties are different. The parties are MASN on one hand and Major League

Baseball on the other. So, the parties have changed, because now MASN is seeking to void and an attack the RSDC decision, which is a body of Major League Baseball. That's why it proceeded pursuant to 8.C. And it has claims against Major League Baseball saying it corrupted the process, conspired, handpicked the arbitrators. Did this long list of things basically to manipulate the process.

So, the issue here is, in the 8.C. application is not straightforwardly what is the fair market valuation of the Nat's rights fees, but whether the RSDC process was carried out appropriately or whether it was corrupted or biased. So, different parties and different issues.

THE COURT: What mechanism would apply, 8.B. or 8.C?

MR. BUCKLEY: Well, it's 8.C. 8.C. applies, because 8.C., what 8.C. says, if there is a dispute between on the one hand Major League Baseball and on the other MASN, Orioles, then that goes to AAA arbitration. So, once you have the RSDC decision --

THE COURT: It says 8.B. says there is a first stage of mediation and then it says if mediation is unsuccessful in such dispute, it shall be arbitrated before the Commissioner of Baseball

pursuant to the provisions of the Major League. Provided Major League Baseball doesn't have an ownership interest.

MR. BUCKLEY: They first brought the team to D.C. It was owned by Major League Baseball. 8.B. involves disputes between MASN and/or the Clubs, right. Okay. 8.C. involves disputes between Major League Baseball on one hand and MASN, Orioles on the other.

So, my analysis and the reading of the contract is, MASN objects to the RSDC's decision. Then it proceeds to 8.A, which is a mediation provision, right. And then if mediation is unsuccessful, it goes to 8.C., which is the AAA arbitration between on the one hand Major League Baseball and on the other MASN or the Orioles. It's set up to deal precisely with this situation where there is an attempt to impugn the RSDC decision and process and the parties, because of Major League Baseball's long tradition of resolving disputes internally, did not want the parties simply to go from an RSDC decision immediately to the courts with a motion to vacate as here. That's what baseball always wanted to avoid. The parties and baseball built in this multi tier process.

THE COURT: 8.C. arbitration is between MASN and the Orioles. MASN/Orioles and Major League Baseball.

MR. BUCKLEY: Yes. We, Commissioner -- Commissioner's Office, Major League Baseball, we're adverse in that arbitration to MASN and the Orioles. It's attacking the decision of a body of Major League Baseball, which is the RSDC, and attacking Major League Baseball directly by saying you improperly influenced and raked the process.

THE COURT: Let me ask you how much more time do you think you need?

MR. BUCKLEY: Quite honestly, I would like 20 minutes to half an hour.

THE COURT: All right. I don't know if I will give you that long. I'll give you more time, but we'll have to break for lunch.

MR. BUCKLEY: I appreciate it.

THE COURT: It's almost 1:15. So, let's come back at 2:15.

MR. BUCKLEY: Thank you, your Honor.

(Whereupon a luncheon recess was taken.)

COURT OFFICER: All rise.

COURT CLERK: This is a recall of index number 652044 of 2014, TCR versus WN Partner, LLC.

THE COURT: Okay. Mr. Buckley, you can continue.

MR. BUCKLEY: Yes, your Honor. Just to conclude the portion of my argument to respond to your Honor's question regarding what I call architecture of Section 8 and how it relates to 2.J. If you're with me, with regard to the March 2005 agreement, we can turn to page 13 and 20, where it begins with Section 8. And it states there, except as otherwise provided in subsections, and then it lists several subsections including 2.J. of this agreement, disputes arising under this agreement shall be resolved as follows. So, there is an exception for 2.J, but that's because it's the first tier of this multi tier process of resolving the fair market value of the rights fees. So, this is saying you must go there first. And the parties to that proceeding are the Nationals and MASN. The RSDC makes determination of fair market value. Then that can be sought to be modified or vacated. But as your Honor pointed out, 2.J. doesn't say where. Section 8 says where. And Section 8.C. tells you where to go in the first instance.

As you'll see in 8.C., as we were discussing earlier, this pertains to disputes between Major

League Baseball on the one hand and Orioles, BOLP, MASN or the other. Three person panel with the American Arbitration Association. This is the provision that both MASN and BOLP invoke to avoid the arbitration.

THE COURT: One of the parties was unhappy with the 2.J. process?

MR. BUCKLEY: That's right.

THE COURT: Then their dispute would be with Major League Baseball.

MR. BUCKLEY: That's correct. The RSDC. This is explained by the RSDC. The Revenue Sharing Definition Committee has been in existence since 1997 as part of the basement agreement, collective bargaining agreement with the Players Association. It's a standing committee. It normally decides disputes between Clubs and baseball over revenue sharing. What income, for example, or revenues are to be counted for in terms of revenue sharing. And also many times there are related party disputes where you may have Regional Sports Network that is owned in part or whole by Clubs, a related party transaction and the RSDC is a standing committee that sits to hear those disputes. It does not normally sit as a arbitral body. But it's part of the

internal decision-making process. And its decisions can be confirmed by the Commissioner, whereupon the decisions are final.

Here, in this agreement, the parties chose this in 2005, this pre-existing body of the RSDC with, by the way, full knowledge of who sits on the RSDC, that is representatives of clubs. Therefore, to address one of their arguments, they claim that two of the three representatives work for clubs that were net beneficiaries or revenue sharing. This was baking the cake in 2005. Baking the cake since 1997. So, they chose a body where there would be competing interests, conflicting interests perhaps in a case say theoretically of a club that is a net beneficiary of revenue sharing, to maximize revenue sharing as opposed to a club that was net paired. So, this was all accepted. And as we see from the New York cases cited in our brief, there is nothing wrong with that.

There are cases where the parties agree that an employee of one of the parties shall be the arbitrator, the Court says that's fine. It's not as if we're going on a AAA rules. You have conflicting interest. That's fine. As long as there is consent, you can have that process.

They chose the RSDC. They also shows it

knowing what the process was. So, now we have complaints that there wasn't cross examination. We didn't have discovery. All these things. But they chose an existing body that already had those procedures in effect.

And with respect to the membership of that committee, I do have to impress one thing, which is that their allegations that the Commissioner, Mr. Selig, handpicked the three persons who sat on the committee to decide this dispute, that's factually --

THE COURT: They were already members of the committee.

MR. BUCKLEY: Exactly. That's completely irresponsible for the party involved here to impute the integrity of the Commissioner to say he rigged the process. We know that two of the three were already on the RSDC from 2008, and the third was appointed in early 2011. And the dispute did not a rise until 2012. They are standing members of a longstanding committee with these processes. Everyone knows. There is no surprise. That's part of the process.

So, but if you have a complaint after the RSDC issues its decision about the process,

specifically the agreement mentioned fraud, corruption, miscalculation of figures as grounds in 2.J.3., that MASN can challenge the decision on, that's a complaint against the RSDC. They made those complaints and claims. They filed 8.C. AAA arbitration.

The Commissioner, as part of our opposition here, has raised 8.C. as a grounds to oppose entry of a preliminary injunction because it shows the unlikelihood of success on the merits, considering there will be, ultimately found to be a lack of jurisdiction in this court at this time.

THE COURT: What is the Federal Arbitration Act for that matter --

MR. BUCKLEY: Apply --

THE COURT: -- Article 75 of the CPLR factor into this?

MR. BUCKLEY: Here it is exactly. We're not saying that the RSDC decision will never be reviewed. It's a question of timing, not of a waiver of any rights under the FAA or CPLR. It's a question of timing.

What the parties agreed to in the 2005 agreement is that they would take their grievances in relation to the RSDC decision. In a first instance,

to a AAA panel for a decision.

And if I could just direct your attention to that, because it's very interesting what it says here. 8.C, on page 14 of the complaint. It says in the last sentence of 8.C, the first paragraph thereof, I'm sorry, first paragraph of 8.C, "Arbitration panel shall issue a final ruling in the form of a recent written decision, which unless appealed from within 30 days, as providable, shall be enforceable under applicable state and federal laws."

So, notice specifically the parties saying that this decision will be enforceable under applicable state or federal laws, language which is missing from 2.J.3. intentionally.

So, then there is a second process, which is, from my experience, rather extraordinary.

THE COURT: Wouldn't this have been much, much clearer if 2.J.3. had said, you know, toward the end of 2.J.3. paragraph, that in the Nationals and RSDC to vacate an order, a market valuation in accordance with Section 8, that would have been clearer?

MR. BUCKLEY: That would have been clearer, right. So, the question is, you still have to interpret the contract as a whole looking at all the

provisions. It may have been apparent to them now or then rather, it may have been apparent to them then. Not so apparent perhaps to us now. But when you consider the structure, it makes perfect sense, because you have this elaborate process.

I want to go on to the second paragraph. If the parties have a grievance with the final rulings of the first arbitration panel's written decision, then there is a second round, an appeals panel consisting of retired or former United States Court of Appeals judges or the highest court of any state. Then it says the bottom of that paragraph, "Any final ruling of the appeals panel is final or refutable, not subject to further review in any respect. Any party to that proceeding may" seek immediate -- "may immediately seek", I'm sorry, "its enforcement under federal or state law.

So, the drafters of the parties may have thought it was perfectly clear that where they intended the ruling or decision to be immediately enforceable under applicable state and federal law, they said so. Where they didn't intend that, they didn't say that. They may have thought if they were good lawyers, express their grievance, exclude the ulterior. We know the words if we had intended the

2.J, to seal the decision, they would have used the words there. We didn't. We used it here. We made it clear that 8.C. is dealing with a different type of dispute between baseball on the one hand and MASN on the other. Not between MASN and the Nationals. Dealing with the other issues. Not the fair market value of the broadcast rights. We're dealing with process of the RSDC.

THE COURT: So, even if the motion to vacate in this court before me is premature --

MR. BUCKLEY: Correct.

THE COURT: -- If I accept everything you're saying, does this court still have authority to issue a preliminary injunction --

MR. BUCKLEY: No.

THE COURT: -- pending the resolution of this process?

MR. BUCKLEY: No, it doesn't.

THE COURT: Why is that?

MR. BUCKLEY: Because it would lack -- Because the award that would be reviewable ultimately here is not yet in existence. It's the award of AAA appeals panel.

The grounds for challenging that award, if any, are not yet known. Right. So, it's going to be

a different award. It's going to be a different process. A different record.

THE COURT: Even though the Nationals are seeking to invoke this termination right in response to --

MR. BUCKLEY: Yes.

THE COURT: -- the award that was -- that was issued under 2.J.?

MR. BUCKLEY: I want to go back to that in a second about that. That involves the Commissioner's directive, which I think I needs to be explained and understand the nature of that. But the process here would be when something belongs before an arbitrable body or is before an arbitrable body, the court should not retain jurisdiction. Certainly should not grant relief, because that intrudes upon the province of the arbitrators, who are the judges of the matter, not this court.

But in all events, there is no contention here that anything is waived. It's a matter of when and what. When is after this process is played through. And what is what is the final AAA panel arbitrable award. That is what would be reviewed in this court or some other court.

Further consider this point. What is the

nature of MASN? From the Nationals' perspective, it's simply a device by which they are paid for their broadcast rights. They have no involvement in the management. The Orioles exclusively control management of MASN. They get a check representing contractually the fair market value of the broadcast rights. So, it's just about money from their perspective.

Why would the parties have adopted this elaborate provision in 8.C. for an unusual two tiered arbitrable process unless it was about the money. Why would you want former fellow Court of Appeals judges or highest court of the state judges to decide the matter unless it was about the money.

So, if you look at it from a rational person, why do they billed a pyramid. Why do they billed this arbiter bill pyramid. There was a reason. It's about because something was at stake. What can be at stake if you're the Nationals and MASN? It's the amount that MASN pays to the Nationals and the Nationals receive from MASN. That's really all that matters. That's why there is all this process, the AAA rules and two tiered review. It's all about that.

So, to go back and sum up on this point.

This we said before the TRO hearing, this dispute doesn't belong here. It's already before the AAA. It should be allowed to preside in the AAA, which will address all of the issues relating to the process and composition of the RSDC body. The process they followed in deciding the matter. All the contentions of fraud, corruption, miscalculation, partiality will all be considered in a due process rich environment of AAA arbitration in due course, not in some, you know, suppose emergency by your Honor, but people who are three, people on each of these two panels over a long period of time in which deliberation in due course will be resolved. So, that's what the parties intended and that's why this matter doesn't belong here.

Let me go back to what I said to you at the start that this could be resolved based on MASN's inability to prove irreparable harm. And I want to go back to the Commissioner's directive and make sure it's properly understood, because someone referred to it as a suggestion. It's not a suggestion. The letter is part of the record here.

What the Commissioner said is that he had authority under three arbitration arrangements. The first one was the Major League Constitution, which is

an exhibit to the declaration I put in. I point to Article 6, Sections 1 and 2. That say the Commissioner is to resolve all disputes between Major League Clubs or involving any Major League entity, including the officers, directors, employees and such. So, that is, I believe, the Exhibit B to my affirmation. I have a copy if your Honor doesn't have it.

It says there again that all disputes and controversies related any way to professional baseball between a club or clubs in any Major League baseball entity, it goes on to say, shall be submitted to the Commissioner as arbitrator. So, I want to emphasize that. Shall be committed to the Commissioner as arbitrator. Who, after hearing, shall have a sole and exclusive right to decide such disputes and controversies, and whose decision shall be final and unappealable.

So, the Commissioner was faced with a question as to which there was no clear answer. During the pendency of the AAA arbitration must the RSDC decision be enforced or not. Disputing parties were MASN and the Nationals. The Commissioner here, viewing MASN as a Major League entity, which he determined it was, said he had jurisdiction under

this instrument. But moreover, the managing partner of MASN, sitting right here, the Baltimore Orioles Limited Partnership, there is no question he controls as a club, that is in their capacity as club, the managing partner of MASN. So, they are bound. Article 2, page seven, it goes on to say that the clubs who are affirming this on behalf of the owners, meaning, for example, Mr. Angelos, the owner of the Orioles, and the ultimate owners of MASN, officers, the same, Mr. Angelos, directors, the same, Mr. Angelos, employees, severally agree to finally unappealable be bound by the actions of the Commissioner. And all other actions, interpretations taken or referenced pursuant to the provisions of this constitution, shall severally waive such right as recourse to the courts as otherwise exist in their favor.

Then he relied upon 8.B. of the March 2005 agreement, which you're familiar with already. It says, all disputes between MASN and the Nationals are to be resolved with the Commissioner.

Finally, there is a MASN partnership agreement, Section 19 thereof. And this language is very broad. It says, Section 19, it says -- it says except as provided in other sections of that

agreement not relevant here, all disputes arising under this amended agreement or the March 28th, 2005 agreement, except to the extent that some other dispute resolution may be provided for therein, shall resolve as follows. It says 19.2 arbitration, and then it provides 19.2, and that the Commissioner as arbitrator will decide the dispute.

So, what is the Commissioner's July 30, 2014 directive? It's an interim arbitrable order. He's acting as arbitrator of the three instruments. What is the law with respect to interim orders? The law in New York, as we cited in the Peabody case, page 22 of our submission, is that courts do not interfere with interim arbiter orders. They rightly rule in arbitration. Once an arbitrator is -- sees the case, arbitrators by the way have jurisdiction to determine their own jurisdiction. That is arbitrability is for the arbitrator under the AAA rules. Then it's for the arbitrator here. He is to decide his jurisdiction. Courts will not interfere in interim interlocutory orders. What he has ordered here is as a provisional relief. An interim payment by MASN to the Nationals, which is reasonable, sensible, considers ability to pay. Considers the totality of what's occurring. Gives due respect to the

arbitrable challenge. He ordered partial implementation of it. There has been no challenge, and there could not be to his ability as an arbitrator to enter that order, because the courts cannot interfere in that. So, there is no challenge to it. And if -- if they today say our pockets are empty, you know, we can't pay (gesturing), all of a sudden, after the Commissioner has issued his order, 245 Park Avenue is the headquarters of Major League Baseball and where the Commissioner resides. And they can apply to him for relief if it is too onerous. What they can't do is collaterally attack.

THE COURT: Commissioner is not too happy these days.

MR. BUCKLEY: No, he's not too happy. What they can do is go to him. What they can't do is come into this court and collaterally attack an arbitrable interim order entered appropriately by an arbitrator, who sees the case under three arbitration agreements. That's what they can't do.

Let me turn to my final point, which is a question of bias. And today, unfortunately, I recognize that your courts have a strong policy of open files, and I respect that. But the integrity --

THE COURT: It's not my court. It's the

entire New York court system.

MR. BUCKLEY: I understand that. The entire New York court system. I respect that. But when an open court, the integrity of individuals is impune, it's appropriate for someone to respond. And we make a very brief response, if I may, in that regard.

It's undisputed that Proskauer never represented the RSDC. That's point number one. Two, Proskauer never had an attorney/client relationship with any member of the RSDC. So, there is Mr. Sternberg from the Tampa Bay Rays. Mr. Coonelly from the Pittsburgh Pirates. And Mr. Fred Wilpon of the New York Mets. Proskauer never represented any of those three persons individually.

Further, there is no evidence that Proskauer's representation of Major League Baseball or Clubs in league wide matters, which representation I say to you is known to the Orioles, because they were league wide disputes. All that was known to them. There was never a motion to disqualify or recuse any member of the RSDC. There was a motion to deprive the Nationals of Proskauer, their chosen counsel, which the RSDC concluded it couldn't grant, had no authority. There was never a challenge to the composition of the RSDC or any contention that

despite Proskauer representing the clubs in say salary arbitration, which is quite routine or league wide matters, many of these cases involve wage and hour claims where all the clubs were sued and baseball --

THE COURT: Did the Commissioner have the authority to disqualify Proskauer for representing the Nationals?

MR. BUCKLEY: The RSDC was the body.

THE COURT: You say they had authority to do that?

MR. BUCKLEY: They perceived that.

THE COURT: Could the Commissioner have done it?

MR. BUCKLEY: You know, I don't know whether the Commissioner could have or could not have. I will say that the application was made to the RSDC. The RSDC indicated it had no authority to rule on that matter. The RSDC never representing itself or members of it.

And one other thing I must say with respect to Mr. Wilpon, whose name was dragged in here this morning, with regard to certain claims that he was being represented by Proskauer in connection with litigation involving Sterling. I'm making this

representation to the Court based on due diligence. I think it's important when someone's integrity has been impugned, for someone to speak up on the part of that individual. I'm speaking about Mr. Wilpon. Jeff Wilpon specifically.

So, the claimant is the Sterling case, if I may refer to my note here, was a fiduciary duty claim regarding information provided by the 401(k) plan and trustees. Jeff Wilpon is a Sterling Equities partner, but was not a trustee of the 401(k) plan. Nor did he have any involvement in the administration of the 401(k). Nor did he oversee either legal or human resources at Sterling. As such he had no involvement in the litigation. Did not participate in the decision to engage Proskauer. Nor was he aware that Proskauer was engaged. Either Jeff Wilpon nor Sterling's general counsel was aware of any representation of Sterling by Proskauer.

Moreover, the Mets on due diligence, have not engaged Proskauer for any matter in the entire time that Jeff Wilpon has been involved in Sterling's operations or Mets operations since 2002. In fact, Proskauer sought to represent Mets in financing development of its ballpark and was not collected. Since 2010 Proskauer has consistently represented

JPMC in its role as lead arranger of the Mets credit facility and is adverse to the Mets in connection with that. I think it was important for me to state that in open court, because the allegations are flying here, I think recklessly and irresponsibly.

The Commissioner, who is again falsely accused of handpicking three members of the committee. Consider that just for a moment, how outrageous that accusation is. For them to make it in their briefs and courts multiple times, when they know it's not true. They know it's not true.

So, they have no regard for reputation of individuals. And they are coming here with that cavalier, reckless manner, imputing people, making allegations of bias and so forth with no evidence to support it whatsoever. And that's the context which it is being served up to you. I want to object in the most strongest terms to the manner in which the parties here, particularly MASN, has conducted itself in that regard.

To conclude, this case can be disposed of purely on the ground of lack of showing by clear and convincing evidence of irreparable harm. If they have a complaint about inability to make a payment, they can appeal or present it to the Commissioner,

who will provide relief, if appropriate. If appropriate.

There has been no complaint to him so far in the three weeks since the directive was issued on July 30th. They can appear before him this afternoon, if they wish to have relief from that. He has acted as arbitrator. His authority is not challenged. And courts will not interfere with interim provisional relief measures by arbitrators. Thank you.

THE COURT: Thank you. Mr. Hall.

MR. HALL: Very briefly, your Honor. I'll defer to my colleague. Mr. Buckley's eloquence is noted, but the record is the record. When he stands here and says that there was never an attorney/client relationship between Proskauer and the Mets, all he can do, your Honor, is look at Exhibit 14 to my affidavit in which on May 22, 2014, while the RSDC proceeding is pending, Proskauer files a pleading in the Northern District of California. It's a corporate disclosure statement. Pursuant to Rule 71 of the Federal Rules of Civil Procedure to evaluate possible disqualification, the undersigned counsel for defendant Sterling, Mets, LP states, clearly representing the Mets during the course of this

proceeding.

THE COURT: What about, did Proskauer represent the Pirates?

MR. HALL: Yes, your Honor, they did. Exhibit 10.

THE COURT: Was it during the --

MR. HALL: Yes, your Honor. Exhibit 10 to my affidavit, which is a Notice of Appearance by Proskauer, Rose on behalf of the Pirates and is dated June 27th, 2012. It's only a couple months after the hearing, presumably right in the midst of their deliberations. And again, judge, we haven't had full disclosure on any of these. This is what we found in the public record. I can tell you that the representation, Proskauer's representation of the Wilpons and Sterling Equities that is going on back in early 2012, I'll tell you exactly when we found that out, judge. August 6th, 2014. The reason why we found that out then was it's the day before we were filing our TRO papers. And we had done searches of Mets and Proskauer and Pirates and Proskauer. But it occurred to me we should search Sterling Equities and Proskauer, and that's what we discovered on August 6th, 2014.

Mr. Neuwirth is correct. The additional

complaints we had about Proskauer is they were representing the Orioles. We didn't change our view on that. They withdrew from the representation of Orioles. That issue was resolved.

The last thing, your Honor, you have authority under, even if this eventually goes to arbitration, under CPLR Section 7502(c), you have clear authority to issue an injunction in aid of arbitration. That's either with pending arbitration or one to be commenced.

Mr. Buckley tries to dodge your authority by saying the award is not yet in existence. All you have to do is look at the Commissioner's June 30th, 2014 letter, which is Exhibit 16, in which he says the award is final and binding upon MASN.

For him to come in here now and say it's not really final, it's only interim, so you can't seek court relief, is disingenuous. Thank you.

MR. PHILLIPS: Your Honor, I'll be relatively brief.

THE COURT: Sure.

MR. PHILLIPS: I hope so at least. Mr. Buckley gives one version of the relationship between Section 2.J. and Section 8. I think you put your thumb on it. It's at least bizarre to start off

Section 8 by saying it doesn't apply to anything under 2.J. and then say okay 2.J. you go through the entire process and now you go to Section 8. It's much more natural to say 2.J. is the exclusive mechanism by which you resolve fee disputes.

THE COURT: 8.C. is a very elaborate, impressive structure with the highest level of retired judges and so on. Did the agreement set up that elaborate process for ancillary disputes or set up that process for the underlying purpose of the whole agreement?

MR. PHILLIPS: Well, there are 15, 16 provisions in this contract.

THE COURT: What types of disputes?

MR. PHILLIPS: The Commissioner is under a responsibility to use his best efforts to enforce all of the provisions in this contract. So, I could imagine a lot of circumstances in which the Commissioner could undermine our ability to get at affiliates, for instance, especially in a situation where we described earlier where under the arbitration award is issued, our margins are extremely thin. If the Commissioner were to come in and interrupt one affiliate arrangement, it could put the business in jeopardy.

We need to have a true neutral arbitration, not to have the option of going in front of the Commissioner. We could be talking about life and death circumstances under this agreement. It seems much more reasonable to assume a provision of 2.J. is the right to fees and how you determine that. And it's done with final and binding language, which is the precise language of the Federal Arbitration Act. And then it says then you go off and you have the opportunity to get it vacated or modified which is also --

THE COURT: You made an arbitration demand under Section 8.

MR. PHILLIPS: I'm sorry?

THE COURT: You've made an arbitration demand under Section 8.

MR. PHILLIPS: We did, because we're not bound by 2.J. We didn't bring this litigation. We're the nominal respondents.

THE COURT: MASN is also making a arbitration demand.

MR. PHILLIPS: They have made an arbitration demand, but not on the grounds of the 2.J. proceedings. It's the effect of the 2.J. proceedings. The duty to faithfully execute the

agreement.

Their argument is that the Commissioner didn't do that. That when we went to Manfred and complained bitterly about the composition of the arbitration panel, when we complained bitterly about the conflicts of interest, when we complained bitterly about the fundamental unfairness of this process, he turned his back on us. All of that, it was arbitrable under 8.C. It was arbitrable under 8.C., because that's the kind of fundamental issue you cannot send to the Commissioner. And it's not the kind of basic economic dispute that you could turn to under 2.J.3. It seems to me it's much cleaner to keep 2.J.3. and its process and along with the Federal Protection Act and the protections we're entitled to. And once you get to that point, then the rest of it falls out, because you can't weigh your protections under the Federal Arbitration Protection Act. That basis alone.

Then the only issue is are we entitled to injunctive relief under these circumstances. If you have a question on that, an answer for that, I'll turn it over to my colleague, who will go back to the last portion of conflict of interest portions.

MR. WEINER: Your Honor, let me --

THE COURT: One initial question. If an injunction were to be granted here, are you saying that your client would not be able to come up with the money, even to put that amount in escrow?

MR. WEINER: Your Honor, I'm not saying that we couldn't go out and borrow the money. What I'm saying is because we don't have the cash currently, we shouldn't be required to pay it as part of the balance of equities here. And if you want me to address that further, I will.

THE COURT: No. That's all right.

MR. WEINER: What we have offered is a bond, which we think is the most sensible way to protect everybody. It keeps the neutrality. It keeps the status quo. It keeps us on the hook. We will have a bond company or a bank that guarantees it. No one can possibly complain.

The problem that we have here with all of this is what your Honor had said to Mr. Neuwirth. We're being put in a position where this truly is an extortionate demand, a blackmail. They say pay us or we terminate you. And what makes it so -- Part of what makes it so extortionate is that it's based on a -- on a decision, an arbitrable decision by the RSDC that all of us know is so severely infected with the

irregularities that it can't possibly stand or shouldn't stand.

THE COURT: You're not speaking for everyone.

MR. WEINER: Well, they don't dispute any of the facts on which we base our claim, nor do they dispute the law which we say governs.

So, what we have here then, your Honor, is a demand to pay something, because of an award that is very much in doubt. And according to Mr. Buckley, I just heard a couple minutes ago, isn't even an award. Isn't even final. It has to go through three other processes if he were correct. Yet they are threatening to cut us off because of what Mr. Buckley says is just the first stop in a long bus line and not something where we're suppose to pay. That's baseball itself saying that.

The further thing, your Honor, is that what was so totally -- part of the total corruption in this case is this RSDC decision that Mr. Neuwirth tried to stress before you. We're not the ones that are trying to change the contract. We're the ones for whom the RSDC did in fact change the contract. If you look at Section 2.J.3., which was the charge to the arbitrator, Section 2.J.3. said that the RSDC is to use "The RSDC's established methodology for

evaluating all other related party telecast in the industry."

Now, where did that language come from? It didn't fall from the sky. At the very time that this language was being negotiated and was suggested, not by Mr. Cohen, because he didn't come on the scene for a year. He doesn't know what took place. They didn't buy the team until a year later. At the time this agreement was being executed, Mr. DuPuy, who was then the COO of baseball, who was negotiating this agreement with the Orioles, Mr. DuPuy walked into the room and he handed the lawyers for MASN three documents, which appear, your Honor, under tabs ten, 11 and 12 of our book.

As you will see from tab ten, tab ten is a decision of the RSDC dated December 3, 2004. The 18th report. Tab 11 -- 16, excuse me. Tab 11 is the RSDC decision dated January 5, 2005. The 18th decision. And you'll see here something very remarkable. This report comes from Francis X. Coonelly, who happens to turn out to be the Pirates representative on the RSDC when our case was decided in 2012.

And if you look at both the decisions and you look at, for example, take a look at this 18th report

under tab 11 and get to the page that's numbered 11, you'll see that what the RSDC said at that time, Mr. Coonelly said it, "The RSDC recommended that an operating margin of 21.9 percent be used in the Bortz analysis. As noted, Bortz has used a 20 percent operating margin for cable contracts and a 30 percent margin for over the air broadcast."

Now, Mr. Buckley says well, the Commissioner has a role in all of this and, of course, the Commissioner can arbitrate things. That's true. In fact, the Commissioner is the administrator of the RSDC. If you look at tab 12, you'll see the ruling of the Commissioner as administrator of the plan in which he orders that the 18th report be accepted. If you look at page two, your Honor, you'll see that the Commissioner said quote, "In particular, I agree that the RSDC should continue to use the so called Bortz methodology in evaluating media, related-party transactions."

Then on the next page he says, "I am", after something that we all redacted, "I am, however, unwilling to endorse any material variation from the objective and consistent Bortz methodology that has served the industry so well."

That's what this agreement said. They gave

us these agreements that said the established methodology. They keep avoiding this language, applicable for evaluating all other related-party transactions. These were the evaluations.

Then, if you look at the next tab, your Honor, the affidavit of Mark Wyche, Mark Wyche is the man, is the Bortz managing director. And we ended up using him because Baseball told us to use him in 2005. They said if you want to figure out what the rights fee should be, you want to figure out what payments should be, you want to figure out how this works, you should hire Bortz. We hired them because Baseball told us to hire Bortz. But at the same time not only did he help us, he continued just as he had been the person underlying those 16th and 18th reports. Over the next 15 years Bortz issued 19, it's in Mr. Wyche's affidavit, Bortz issued 19 reports for the RSDC, every time applying his Bortz methodology. And when we came here before the RSDC, all we said was, you promised us the Bortz methodology. You told us it is the Bortz methodology. You promised us you were going to do what you do in every other case. And, in fact, after the RSDC said we're going to do something different here, they hired Mr. Wyche and Bortz two more times

in 2012, after our case, in which they said to Mr. Bortz, excuse me, which they said to Mr. Wyche, we want you to apply your methodology for how we determine television rights fees.

So, we're not asking for anything other than what they do in every other case. If you look at footnote two to this opinion, this decision that Mr. Neuwirth referred you to, there is something he omitted to mention. That's under tab 15, your Honor, or part of that decision. If you look at page two of the RSDC decision, the -- in footnote two, the RSDC was concerned, how do we deal with the fact that we're doing something different from what we do for all of the television rights agreements in the industry. How can we live with this report when we're going to have to, if it's part of our decision, part of our precedent, how do we live with it when we have to deal with all the other teams.

So, in footnote two they said oh, this case is different from any other case that we deal with. Therefore, accordingly, this decision is issued by the RSDC as an arbiter in a contractual dispute between these parties. Not in its capacity as an evaluator of transactions under the plan. As such, this decision shall not constitute precedent of the

RSDC.

So, what do you have? You have an agreement that says 2.J.3. you're suppose to apply the same thing you do in all the other cases. And you have the RSDC itself saying, we're not going to do what we do in any of the other cases. This case is going to be sui generis. This case is the Bush versus Gore of the RSDC. It's really what it is.

They come in and it's a made up decision that's -- couldn't have -- it couldn't have been done. It was beyond their power to do. What it is is an attempt to change the contract between the parties. That's what this whole thing is, to force us to pay them as part of this attempt to change the contract.

Now, Mr. Buckley comes in and says look, the Commissioner issued a letter and told them to pay. The one thing he didn't tell you is that the Commissioner didn't issue that letter until the day before we came in here and met in that room with your assistant. After the process was already going on, after the case was already going on, the Commissioner decided to interfere with this court proceeding. We were already scheduled to come and talk about scheduling the TRO. And it was the day before or the

weekend before that the Commissioner wrote that letter.

And -- and the processes should be regular. Their process should be regular. And the Commissioner shouldn't be interfering with the court.

THE COURT: Okay. We're going to take a recess.

MR. WEINER: Thank you.

MR. NEUWIRTH: Your Honor, I don't want to abuse the Court's indulgence.

THE COURT: I'll give you a minute.

MR. NEUWIRTH: Thank you. We were tagged teamed here. Very quickly.

First, everything Mr. Weiner just told you about the RSDC decision leaves out the critical point that the RSDC said yes, we use Bortz, but the version of Bortz that MASN presented to us is not the version of Bortz that we wanted to use. We looked at that before.

Second, if I could hand this up to your Honor and Ms. Edelman. Right before this process began, in the decision, that footnote that Mr. Weiner just referred to you, it said that the RSDC sent both teams an explanation of the methodology that would be used. You'll see in the second paragraph, to assess

fair market value, the RSDC conducts a multidisciplinary analysis of relevant variables, the precise mix of which depends on the facts and circumstances of each case. There is no reference to Bortz.

In the RSDC decision itself, if your Honor -- I'm sorry -- your Honor looks at footnote five on page five, it says, "Rob Manfred provided the Nationals and Orioles summaries of the Committee's methodology before the RSDC heard oral argument in this dispute. These summaries accurately describe the methodology we applied here." No party took issue with Mr. Manfred's description at the time. Once again, this is an after-the-fact effort to challenge something that wasn't challenged during the proceeding.

Just very quickly. Your Honor, if I could hand up to you the matter of the Namdar case that was cited in our papers. It says, "A party who proceeds with an arbitration with actual knowledge of bias on the part of an arbitrator or facts that should have prompted further inquiry, waives his objection to the arbitration. In this case the alleged prejudice of the arbitrator was known to Nirzoeff before completion of the arbitration proceeding. Nirzoeff,

however, did not raise the alleged bias until well after the arbitration award was rendered. Accordingly, the claims related to the arbitrator's alleged prejudice has been waived."

The cases that they cited to you, it is remarkable to me that they told you these cases prove something that they didn't know about Proskauer. If you look at the two cases they cited, the first is behind Exhibit 10 in the Hall affidavit. The name of the case is Garber versus Commissioner of Baseball, et. al. You will see there, if you look under the Proskauer signature, they are representing almost every team in baseball. The team they weren't representing was the Orioles, because the Orioles opted not to participate in Proskauer -- I'm sorry. I'm sorry. I made a mistake. I apologize. That's not true in this case. That's a different case.

But in this case it says Garber versus Offices of the Commissioner of Baseball. Everybody knew about this case. It was the case challenging the exclusive TV territory of every team. The case has been now in the Southern District.

The second case they mentioned behind tab 14 is the Cetti versus Commissioner of Baseball case against all the teams in Major League Baseball. The

only team that Proskauer wasn't representing was the Orioles, because they opted out. This is a document that they show you that they got prior to the issuance of the decision of the RSDC. They got both. The Orioles could only have operated out if they knew Proskauer was representing everyone. So, for them to stand here now and tell you they were duped, it just isn't true.

Finally, your Honor made reference to the fact earlier that the cases they cite don't support their position on irreparable harm. I want to hand up one of the key cases they rely on in their latest papers, which is the Level III case. And I have one copy I'll give to your Honor. This is a case which has the exact same circumstance here.

As your Honor noted, the cases that they had originally cited last week for the TRO were cases where the party to whom a payment was being asked to be made on an interim basis, had dissipated funds that the party being asked to make the payment had previously given. There is nothing like that here. In this case, this Level III case that they cite, it's so similar to here, it's incredible.

The Court finds that Level III has failed to show that any harm it suffers is irreparable and

cannot be compensated through an adequate remedy of law. There are now two lawsuits pending in which Level III will recover for any charges that claims are not due and which invites chaos and protest.

In the circumstances of this case it would not be unjust to require Level III to comply with this condition precedent in order to lift the embargo without admission or confession. The converse, however, is not true. To grant preliminary injunctive relief to a party, which not only has the ability but the apparent obligation to pay the amounts allegedly due under protest, would render the requirement of irreparable harm elusory. This case is this situation.

THE COURT: There are cases, I take it your position also is, there are cases on both sides of this.

MR. NEUWIRTH: Respectfully, your Honor, we would submit that the only cases going the other way are cases not like here. They are cases where there was an issue about what was happening to money that had previously been given. There is no issue here. Nobody here is saying that the Nationals have taken money from MASN and lost it. There is nothing happening here where anybody -- We have had a hearing

today where accusations have been hurling like wild-fire.

The thing you never heard last week or today from all of these lawyers that the Orioles and MASN hired was, we have a problem, 'cause if we give this money to the Nationals, they won't be able to pay us back. You never heard that ever, because it would be a lie. And the fact is there is such an easy solution here to avoid irreparable harm. They get the money back with interest. There is no harm to anyone. But the real blackmail here is what they are trying to do. They want to use their own calculation, not the RSDC calculation, to pay us in the interim while this effort to overturn an arbitration award is pending either here or AAA. And that's to try to force the Nationals back to the negotiating table so they could try to undue this whole deal. That's the blackmail that this court should not encounter. Thank you, your Honor.

THE COURT: We'll take a recess and stick around. I'll be back with a decision.

MR. NEUWIRTH: Thank you, your Honor.

(Whereupon a recess was taken.)

COURT OFFICER: All rise. Be seated.

THE COURT: Okay. I have a relatively brief

decision I'll read for the record now.

Before the Court today is petitioner's motion for a preliminary injunction. The injunction is granted.

There is no question regarding the test on a preliminary injunction. The Court is to look to the questions of irreparable harm, likelihood of success on the merits and the balance of the equities.

The threat to terminate broadcasting rights, virtually immediately is a credible threat, and one that would cause irreparable harm to movants.

Indeed, the very "purpose of a preliminary injunction is to maintain the status quo pending a hearing on the merits, rather than determine the parties ultimate rights." See 360 West 11th LLC v. ACG Credit Company II, LLC, 46 A.D.3d 367 (First Department 2007).

The Court notes that the amounts that were ordered to be paid per the baseball commissioner's directive, as well as the broader determination regarding amounts in the arbitrators' order, are the monies that are "the subject of the action", as the First Department addresses in Ficus Investments v. Private Capital Management LLC, 61 A.D.3d 1, (First Department 2009). Accordingly, it is those payments

that must be stayed, to maintain the status quo. To do otherwise, would permit possible extortion of one side by the other, while there is an examination of the propriety of the process. The fairness of the underlying process is what concerns this court most of all, and the money and responsibilities of the parties should not be dramatically changed, while that is reviewed.

Further, the First Department has held that where denial of the injunctive relief would effectively disrupt rather than maintain the status quo, "the degree of proof required to establish the element of likelihood of success on the merits should be accordingly reduced." See Sau Thi Ma v. Xaun T. Lien, 198 A.D.2d 186 (First Department 1993). That is the case here.

Still, the question of the merits is not a simple one. The Federal Arbitration Act clearly provides that a party may seek vacatur of an award either where an award was procured by corruption, fraud or undue means, or where there was evident partiality of the arbitrators. See 9 U.S.C., Section 10(a). See also Applied Industrial Materials v. Ovalar Makine Ticaret Ve Sanayi, 492 F3d 132, (Second Circuit 2007), analyzing the United States Supreme

Court decision in Commonwealth Coatings Corp. v. Continental Casualty Company, 393 U.S. 145.

There is no question that "basic fundamental principles of justice require complete impartiality on the part of the arbitrator and mandate that the proceedings be conducted without any appearance of impropriety." As such, "it is incumbent upon an arbitrator to disclose any relationship which raises even a suggestion of bias." See Kern v. 303 East 57th Street, 204 AD2d 152 (First Department 1994).

Indeed, "in order to reduce the number of post-arbitration cases challenging the impartiality of the arbitrator, the Court of Appeals has expressed a policy of maximum prehearing disclosure in arbitration proceedings. Consequently, an arbitrator should disclose any relationship which raises even a suggestion of possible bias." See In re. Sona v. Northwest Biotherapeutics, 41 A.D.3d 257 (First Department 2007).

Movants have stressed to the Court that they did not sit on their objections regarding the alleged lack of neutrality of the arbitrators. They argue, both in their papers and in court today, that they raised timely questions regarding these relationships. And that they were not given any

meaningful responses. They also argue that the right to arbitrators, via whatever ADR forum is selected, that are neutral is non-waivable. This is surely true. The questions of who knew about which alleged conflicts and when is a significant issue.

MASN asserts that it repeatedly objected because of the Proskauer representation and it asked RSDC to make disclosures regarding their relationship with Proskauer.

The Court is determining that movants have put forth enough, in their motion papers, regarding the question of the neutrality of the arbitrators and the role that a single law firm had in terms of multiple participants in the arbitration process, for the arbitrators, for the Nationals and for the baseball commissioner. Important questions are raised. The Court stresses, however, that those questions are sufficient to strongly contribute to a granting of a preliminary injunction, but those questions are not answered here today.

Further, the question of the likelihood of success on the merits is bolstered by the multiple positions taken in opposition to the preliminary injunction. In the commissioner of baseball's July 30, 2014 letter, he calls the RSDC's

determination final and binding, under Section 2.J.3. of the Agreement. However, today the commissioner takes the position that that same determination is an interim order, under the other dispute resolution procedures set forth in Section 8 of the agreement. There is much clarity, as to process and forum, that will need to be decided, and no final decision is being made today. But a pause in this process, to look at how the parties should be proceeding is appropriate. And the questions raised regarding this cut in movant's favor, on the question of the likelihood of success on the merits.

As to the balance of the equities, the Court also must find that a preliminary injunction is warranted. The balance of the equities supports maintaining the status quo, while there is an expeditious examination of the merits. The balance of these equities supports the prevention of terminating broadcasting rights. The termination of broadcast rights would harm MASN far more than a temporary inability to terminate those rights would harm the Nationals.

Furthermore, the question regarding vacatur or confirmation of an arbitration award is the type of question that courts can handle expeditiously.

This too, impacts the balance of the equities, and supports a short maintenance of the status quo.

Accordingly, the preliminary injunction is granted. And I would note the next conference in the case has already been scheduled for this week on Thursday, August 21st, 10:30 a.m. At that time, counsel can raise next step questions and options. But for now, this Court is maintaining the status quo.

Finally, to preserve the rights of all parties, MASN is ordered to post a bond in the amount of $20,074,409, which is the figure as calculated in Nationals' affidavit of Ed Cohen, dated August 13, 2014.

MR. NEUWIRTH: May I ask one clarifying question, your Honor. The injunction that was requested by MASN in this matter, was an injunction to prevent the Nationals from exercising any right to terminate with respect to the additional amounts that the RSDC decision would require MASN to pay the Nationals beyond the amounts that MASN has already paid.

THE COURT: There is 15 million owed now and another 5 million shortly.

MR. NEUWIRTH: Correct.

THE COURT: What about after that?

MR. NEUWIRTH: There are additional amounts.

THE COURT: When is the next payment?

MR. NEUWIRTH: I believe the next payment is April of 2015.

THE COURT: All right. So, the injunction goes to the 20 million, approximately 20 million figure.

MR. NEUWIRTH: Right. I just wanted to clarify.

THE COURT: I'll issue an order making that clear.

MR. NEUWIRTH: Right. I just wanted to clarify that the injunction was not applying to any other amounts that may be owed, not in terms of the RSDC decision, but underlying amounts that MASN had previously in this hearing said it was planning to pay.

In other words, MASN agrees that it is going to pay us $10 million on the next payment date. And the question here was whether there would be an additional amount required by the RSDC decision. I understand that you're telling us that we cannot exercise any termination right with respect to those amounts, and we understand your Honor's order in that

regard. We just wanted to make sure there was clarity that if, for example, on amounts that were not the subject of the RSDC decision, that MASN has agreed they are going to pay, that they wouldn't suddenly stop paying us.

THE COURT: Any objection?

MR. HALL: No, your Honor.

MR. NEUWIRTH: Right. The order doesn't reach that.

THE COURT: Okay. Very good.

MR. NEUWIRTH: Thank you.

MR. HALL: Your Honor, could we request five business days to post a bond?

THE COURT: That's fine.

MR. NEUWIRTH: And then one other matter, which we were going to just raise with Ms. Edelman, since your Honor had mentioned the hearing on Thursday. This is really not in an effort to slow anything down. In fact, we appreciate your Honor's comments that this is a matter that this Court could handle expeditiously that we support. I advised other counsel that a court in another case has scheduled a hearing for this Thursday at the same time that we had this conference scheduled. And we were -- I believe nobody objects to our at least

checking with Ms. Edelman, if there might be an opportunity to move the time or date.

COURT CLERK: Call in and we can adjourn it when there is a convenient time for all counsels.

MR. NEUWIRTH: Thank you very much.

THE COURT: Thank you.

MR. HALL: Thank you, your Honor.

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Certified to be a true and accurate transcript of the above-captioned stenographic minutes.

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Lori Ann Sacco

Official Court Reporter